THE TERRY FOX
MEDICAL RESEARCH FOUNDATION

July 1991

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The Hon. J. Jansen
Minister of Finance
Ministry of Finance and Corporate Relations
Room 152, Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Sir:

Re: The Terry Fox Medical Research Foundation

In response to my appointment under Section 85(1) of the Society Act to investigate the affairs and conduct of The Terry Fox Medical Research Foundation ("Fox") and all of its associated and affiliated companies, I report as follows.

CONCLUSION

There appears to be no sound business reasons for the existence of The Terry Fox Medical Research Foundation as it presently operates. It has never operated as a fund raising charity.

It has only minimal financial resources and the expectation of Government grants, at least in the short run, to finance the production and distribution of products which are yet to be determined.

Without a guaranteed source of funding, it is unable to attract persons with expertise in the pharmaceutical industry. Excluding the Biomedical Research Centre, the Fox group has had only one full time employee from June, 1986 until May , 1991, when a new executive director was appointed for a period of six months.

It is unrealistic to believe that, with the resources available, Fox will be able to compete with the multi-national corporate giants of the pharmaceutical industry.

Founded in Canada in 1864 by Thomas Clarkson,
Ernst & Young provides a full range of professional services
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(c) To enter into any contracts or arrangements with any person, corporation or institution, which may further the Foundation's purposes including contracts for the production, acquisition, sale, lease, licence or distribution of, or other dealings in, medical or pharmaceutical products or techniques, and to obtain from, or grant to, any such person, corporation or institution any right, privilege, licence, permit or concession to obtain or grant, and to carry out, exercise, and comply with such arrangements, right, privileges, licences, permits, and concessions; and

(d) To do all other things as are incidental or conducive to the attainment of the purposes of the Foundation.

Fox was originally set up by the Government of British Columbia.

To finance Fox the British Columbia Government provided shares in the B.C. Resources Investment Corporation ("B.R.I.C."). At that time the shares were valued at approximately $26 million. Fox was not allowed to sell these shares because of government requirement that they were to be used as security for financing only.

When approval for sale of the B.R.I.C. shares was received in the 1987 fiscal year the proceeds were only $5.8 million.

The Applicants for Incorporation and first trustees were:

Pat McGeer
Allan Williams, Q.C.
Jim Nielsen
Newell Morrison
Ian Jessiman
Bill Gibson, M.D.

Section 3.3 of the By-laws states that:

"the Executive Council shall appoint a Board of no less than nine or more than fifteen qualified trustees to replace the first trustees".

2. A Biotechnology Processing Centre to produce medicines including Interferon, which at the time was thought to be a major anti-cancer treatment.

3. A major pharmaceutical distribution and sales company.

The charitable institution would raise the funds to establish and support the Research Centre. The Research Centre would develop the medicines which would then be produced in the processing centre and sold by the distribution company.

The profits from the sales would be re-invested in the Research Centre

The Biomedical Research Centre was constructed at the University of British Columbia and is staffed by research scientists.

The centre building is owned by B.P. Centre Ltd. which is owned 50% by Fox and 50% by the Wellcome Foundation, a large British based pharmaceutical company.

The Wellcome Foundation signed an agreement on March 4, 1981, with Pacific Isotopes and Pharmaceuticals Ltd. (now named Pacific Pharmaceuticals Ltd.) for the technology and marketing rights to Interferon in Canada and mainland China. This agreement expires in March, 1992.

At the time the agreement was signed, Pacific Isotopes and Pharmaceuticals Ltd. was a subsidiary of the British Columbia Development Corporation. Fox acquired all the shares of the company from B.C.D.C. on March 30, 1983.

The Biotechnology Processing Centre is in the planning stage. Fox has entered into a 50-50 partnership with Quadra Logic Technologies Inc., a British Columbia company, in Pharmical Manufacturing Limited. Pharmical plans to construct the Biotechnology Processing Centre in Langley, B.C.

Pacific Pharmaceuticals Ltd. is intended to be the distribution company.

COMPLAINTS

The complaints in this matter focus on four areas:

1. The non-renewal of the contract of Dr.Schrader, the head of the Biomedical Research Centre.

Dr. Schrader has left the Biomedical Research Centre. An interim director has been appointed to replace him. I do not consider that this matter is of great concern to the public interest.

I understand that Dr. Schrader has retained counsel. It is perhaps more appropriate that this matter be resolved between the parties.

2. The fund raising letters were found at the Research Centre and immediately forwarded to Owen Bird, Mr. Warren's firm, by a staff member.

Mr. Warren acknowledged that he was a fund raiser for the Social Credit party. He assured me that no fund raising letters were typed by staff of Fox and that any such letters would have been typed by his own secretary at Owen Bird.

I discussed the matter with a prior secretary of Mr. Warren's who had later worked for the Biomedical Research Centre. She confirmed that she had typed fund raising letters for Mr. Warren whilst employed by Owen Bird but never whilst employed at the Biomedical Research Centre. She was not aware how copies could have been at the Centre.

I conclude that there is no evidence of misuse of the Biomedical Research Centre facilities or staff in connection with these letters.

3. There is no doubt that conflicts of interest existed in Mr. Warren's relationship with Fox.

Mr. Warren became a trustee of Fox in April, 1983.

In the first few years of Fox's existence, legal services were provided by the Ministry of the Attorney General. Mostly, by the person of Douglas R. Johnson.

At a meeting of the Board of Trustees of Fox held on February 7, 1984, "Thomas L. Vazakas, solicitor with Owen Bird" was in attendance by invitation. That appears to be the first involvement of Owen Bird in a legal capacity.

I have seen no evidence that the remuneration of Mr. Warren was ever fixed by the Trustees by formal resolution. Some trustees mentioned that the fees were discussed informally from time to time.

The minutes of Fox refer several times to Mr. Warren's concern over the size of Owen Bird's fees and the lack of a full time Executive Director.

A representative of Peat Marwick Thorne, the Fox auditors, advised me that there had been no Board approvals until late 1989 when all the payments to Owen Bird and Michael Warren were approved retroactively. This would have been after receipt of the Price Waterhouse report referred to later in this report.

Annual fees charged by Owen Bird to the Fox group for the years ended March, 1988 to 1991 ranged from $208,187 to $267,066.

Mr. Warren told me that his appointment was originally only temporary as Executive Trustee. It was thereafter difficult to recruit a full-time Executive Trustee due to the uncertain future of Fox owing to lack of funds and the declining interest of Government.

Other trustees suggested that it was cheaper to pay Mr. Warren than to pay a recruitment fee and then a salary for a full-time position.

Mr. Warren continued in the Executive Director's position until May 27, 1991 when Mr. David Saxby was appointed to replace him on a 6-month contract at $10,000 per month.

In minutes of a joint meeting of the Board of Trustees of the Terry Fox Medical Research Foundation and the Boards of Directors of Pacific Pharmaceuticals Ltd. and B.P. Centre Limited held on February 5, 1990, Mr. Ron Woodward, Assistant Deputy Minister, Ministry of Advanced Education, Training and Technology is quoted:

> "The government was aware of exactly what was happening in respect of legal work at present. He stated that a long-term arrangement would not continue but that there was nothing wrong with the arrangement. He stated that it would be illogical to change the arrangement prior to conclusion of the current project. He stated that the retention of the Chairman, through Owen

I do not consider it cost effective for me to re-visit all the issues raised by the Price Waterhouse report. I have not carried out the necessary investigation to comment on the accuracy or most of the findings of the report. I do recommend that you read the Price Waterhouse report in conjunction with this report.

I have asked the Board members that I have interviewed what steps have been taken, if any, to implement the recommendations of the Price Waterhouse report classified as "IMPORTANT".

All those interviewed disagreed that Fox was operating beyond its mandate. They felt that the ancillary purposes allowed the formation of the various subsidiary companies.

Mr. Warren referred to a submission to Provincial Cabinet June 7, 1989 which outlined the problems of the Fox group. Specifically, Fox was "under capitalized, needs to recruit a C.E.O., needs to make decisions about appointments to the board, needs to have a government commit to the Processing Centre project, needs to develop the whole Nordion strategy".

New appointments to the board have filled most of the positions listed but the board is still less than the minimum required.

Owen Bird are no longer Fox's legal advisors. Clark Wilson were appointed in April, 1991.

Mr. Warren feels that the "Business Strategy" for Fox dated January 20, 1989, addressed the issue of where Fox was going as follows: "it required the government to make important decisions and until the government made decisions about whither goest the Fox Group, it's pointless putting together a business plan because you don't know what money you have."

A new executive director has been appointed for a 6-month period. One of the issues he will look at is the Fox deal with Quadra Logics Technologies Inc. so that the Board of Fox can consider the alternatives if the Provincial government does not continue funding Fox.

Unknown to most members of the Fox Board, the University of British Columbia has been negotiating with the Wellcome Foundation to acquire Wellcome's 50% interest in the Biomedical Research Centre.

Province of
British Columbia

NEWS RELEASE

MINISTRY OF FINANCE AND CORPORATE RELATIONS

Released: October 23, 1991 32/91

Fox Foundation Report Released

Victoria ... A report on the Terry Fox Medical Research Foundation (Fox) was released today by the Ministry of Finance and Corporate Relations.

The report is a result of an investigation into the affairs and conduct of Fox carried out under section 85(1) of the *Society Act* by David Hooper, F.C.A., Ernst & Young Chartered Accountants.

The investigation did not find evidence of misuse of Biomedical Research Centre facilities or staff, or improper conduct on the part of the chairman.

Fox will continue to be monitored by the ministry.

Fox was incorporated under the *Society Act* on March 14, 1981 to sponsor and promote biomedical and pharmaceutical research and to aid in the treatment of diseases through research. It has no connection with the Terry Fox fund-raising runs for cancer research.

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For more information contact:

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Registrar of Societies
Ministry of Finance and
Corporate Relations